

Introduced by Senator Calderon

February 17, 1998

An act to amend Section 368 of the Penal Code, to amend Section 2583 of, to amend the heading of Part 7 (commencing with Section 250) of Division 2 of, and to add Section 259 to, the Probate Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1715, as introduced, Calderon. Elder and dependent adult abuse.

(1) Existing law provides that it is a crime, punishable by imprisonment in a county jail not exceeding one year, or in the state prison for 2, 3, or 4 years, for any person, under circumstances or conditions likely to produce great bodily harm or death, to willfully cause or permit any elder or dependent adult to suffer, or to inflict thereon unjustifiable physical pain or mental suffering, or for any person having the care or custody of any elder or dependent adult to willfully cause or permit the person or the health of the elder or dependent adult to be injured or endangered.

This bill would make it a crime, punishable by fine not exceeding \$1,000 or by imprisonment in a county jail not exceeding one year, for any person who isolates, or engages in a pattern of isolation, as defined, an elder or dependent adult. By creating a new crime, this bill would impose a state-mandated local program.

(2) Existing law requires a mandated reporter, as defined, to report physical abuse on an elder or dependent adult, to

designated agencies within a specified time period, when the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has reason to believe that an elder or dependent adult has been physically abused. Mandated reporters are defined to include a dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency.

This bill would also require mandated reporters to report fiduciary abuse, as defined, and isolation, as defined, when the mandated reporter has reason to believe that the elder or dependant adult has been the victim of isolation or fiduciary abuse. This bill would also expand the definition of mandated reporters to include any person who has a fiduciary relationship with the elder or dependent adult, who works for a bank or other financial institution, any firefighters, humane society officers, or animal control officers, any clergy member, as defined, and any member of a religious or charitable group or society who provides services to, or regularly comes into contact with, an elder or dependent adult, other than a member of the clergy. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law provides for the distribution of an estate upon the death of a person owning real or personal property, or both, where the deceased has been the victim of a homicide.

This bill, in addition, would provide that any person who has abused an elder or dependent adult, in violation of specified provisions of law, is deemed to have predeceased the victim. The bill would specify that such a person has no costs or any right, title, or interest by reason of the death of the victim, whether by intestate succession, will, or trust.

(4) Existing law authorizes judicial proceedings under which a conservator may be appointed to manage the property and financial affairs of a person. The court is required to consider the relevant circumstances in determining whether to authorize a proposed action in connection with the conservatee's property, including circumstances enumerated in existing law.



This bill would add as a specific circumstance for the court's consideration in this context whether a beneficiary of the conservatee committed a tort against the conservatee under certain conditions.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is
2 amended to read:

3 368. (a) (1) ~~Any~~—*The Legislature finds and declares*
4 *that as the population of elders and dependent adults*
5 *increases, the number of unscrupulous persons who prey*
6 *on this population for the purpose of committing financial*
7 *abuse will increase.*

8 (2) *The Legislature finds and declares that financial*
9 *crimes against elders and dependent adults create a*
10 *greater harm than similar crimes against others because*
11 *an elder or dependent adult has less ability to financially*
12 *recover from these losses, as the elder or dependent adult*
13 *is frequently living on a fixed income and has a reduced*
14 *ability to earn new income.*

15 (3) *The Legislature finds and declares that crimes*
16 *against elders and dependent adults are deserving of*
17 *special consideration and protection, not unlike the*
18 *special protections provided for minor children, because*
19 *elders and dependent adults may be confused, on various*
20 *medications, mentally or physically impaired, or*
21 *incompetent, and therefore less able to protect*
22 *themselves, to understand or report criminal conduct, or*
23 *to testify in court proceedings on their own behalf.*

24 (b) (1) *Any person who, under circumstances or*
25 *conditions likely to produce great bodily harm or death,*

1 willfully causes or permits any elder or dependent adult,
2 with knowledge that he or she is an elder or a dependent
3 adult, to suffer, or inflicts thereon unjustifiable physical
4 pain or mental suffering, or having the care or custody of
5 any elder or dependent adult, willfully causes or permits
6 the person or health of the elder or dependent adult to be
7 injured, or willfully causes or permits the elder or
8 dependent adult to be placed in a situation in which his
9 or her person or health is endangered, is punishable by
10 imprisonment in the county jail not exceeding one year,
11 or in the state prison for two, three, or four years.

12 (2) If in the commission of an offense described in
13 paragraph (1), the victim suffers great bodily injury, as
14 defined in subdivision (e) of Section 12022.7, the
15 defendant shall receive an additional term of three years
16 in the state prison, except that if the victim is 70 years of
17 age or older the additional term shall be five years.

18 (3) If in the commission of an offense described in
19 paragraph (1), the defendant proximately causes the
20 death of the victim, the defendant shall receive an
21 additional term of five years in the state prison, except
22 that if the victim is 70 years of age or older the additional
23 term shall be seven years.

24 ~~(b)~~

25 (c) Any person who, under circumstances or
26 conditions other than those likely to produce great bodily
27 harm or death, willfully causes or permits any elder or
28 dependent adult, with knowledge that he or she is an
29 elder or a dependent adult, to suffer, or inflicts thereon
30 unjustifiable physical pain or mental suffering, or having
31 the care or custody of any elder or dependent adult,
32 willfully causes or permits the person or health of the
33 elder or dependent adult to be injured or willfully causes
34 or permits the elder or dependent adult to be placed in
35 a situation in which his or her person or health may be
36 endangered, is guilty of a misdemeanor.

37 ~~(e)~~

38 (d) Any caretaker of an elder or a dependent adult
39 who violates any provision of law proscribing theft or
40 embezzlement, with respect to the property of that elder



1 or dependent adult, is punishable by imprisonment in a
2 county jail not exceeding one year, or in the state prison
3 for two, three, or four years when the money, labor, or
4 real or personal property taken is of a value exceeding
5 four hundred dollars (\$400), and by a fine not exceeding
6 one thousand dollars (\$1,000), by imprisonment in a
7 county jail not exceeding one year, or by both that fine
8 and imprisonment, when the money, labor, or real or
9 personal property taken is of a value not exceeding four
10 hundred dollars (\$400).

11 ~~(d)~~

12 *(e) Any person who isolates, or engages in a pattern of*
13 *isolation of, an elder or dependent adult is punishable for*
14 *each count of isolation, by a fine not exceeding one*
15 *thousand dollars (\$1,000) or by imprisonment in a county*
16 *jail not exceeding one year or both.*

17 *(f) As used in this section, “elder” means any person*
18 *who is 65 years of age or older.*

19 ~~(e)~~

20 *(g) As used in this section, “dependent adult” means*
21 *any person who is between the ages of 18 and 64, who has*
22 *physical or mental limitations which restrict his or her*
23 *ability to carry out normal activities or to protect his or*
24 *her rights, including, but not limited to, persons who have*
25 *physical or developmental disabilities or whose physical*
26 *or mental abilities have diminished because of age.*
27 *“Dependent adult” includes any person between the*
28 *ages of 18 and 64 who is admitted as an inpatient to a*
29 *24-hour health facility, as defined in Sections 1250, 1250.2,*
30 *and 1250.3 of the Health and Safety Code.*

31 ~~(f)~~

32 *(h) As used in this section, “caretaker” means any*
33 *person who has the care, custody, or control of or who*
34 *stands in a position of trust with, an elder or a dependent*
35 *adult.*

36 ~~(g)~~

37 *(i) (1) A pattern of isolation of an elder or dependent*
38 *adult is a pattern of conduct by which a person or persons*
39 *act to control, as closely as possible, all avenues of*
40 *communication to and from the elder or dependent adult*

1 *for the purpose of committing financial abuse. Once*
2 *communication to and from the elder or dependent adult*
3 *is controlled, a pattern of isolation also may occur where*
4 *a person or persons do any of the following: (A)*
5 *exaggerate any physical or mental disabilities or problems*
6 *of the elder or dependent adult in order to make him or*
7 *her more dependent upon the controlling person or*
8 *persons, (B) encourage or exaggerate fears or concerns*
9 *of the elder or dependent adult in order to further*
10 *increase the dependence of the elder or dependent adult*
11 *upon the controlling person or persons, or (C) attempt to*
12 *keep the elder or dependent adult unaware through the*
13 *use of alcohol, drugs, or lack of rest in order to keep the*
14 *elder or dependent adult disoriented and unable to think*
15 *clearly.*

16 *(2) As used in this section, isolation may consist of any*
17 *of the acts set forth in Section 15610.43 of the Welfare and*
18 *Institutions Code, in addition to any acts committed for*
19 *the purpose of carrying out a pattern of isolation as*
20 *described in paragraph (1) above.*

21 *(j) Nothing in this section shall preclude prosecution*
22 *under both this section and Section 187 or 12022.7 or any*
23 *other provision of law. However, a person shall not*
24 *receive an additional term of imprisonment under both*
25 *paragraphs (2) and (3) of subdivision (a) for any single*
26 *offense, nor shall a person receive an additional term of*
27 *imprisonment under both Section 12022.7 and paragraph*
28 *(2) or (3) of subdivision (a) for any single offense.*

29 SEC. 2. The heading of Part 7 (commencing with
30 Section 250) of Division 2 of the Probate Code is amended
31 to read:

32

33 PART 7. EFFECT OF HOMICIDE OR ABUSE OF
34 AN ELDER OR DEPENDENT ADULT

35 SEC. 3. Section 259 is added to the Probate Code, to
36 read:

37 259. (a) Where it is established in a civil action by
38 clear and convincing evidence that the defendant is liable
39 for physical abuse, neglect, isolation, or fiduciary abuse,



1 the defendant shall suffer the forfeitures described in
2 subdivision (c).

3 (b) Any person who has been convicted of a violation
4 of any provision of Section 368 of the Penal Code shall
5 suffer the forfeitures described in subdivision (c).

6 (c) Any person described in subdivision (a) or (b) of
7 this section shall be deemed to have predeceased the
8 victim, and shall have no costs, or have any right, title, or
9 interest therein, by reason of the death of the decedent,
10 whether by intestate succession, or under a will of the
11 decedent, or a trust created by or for the benefit of the
12 decedent or in which the decedent has an interest,
13 including any general or special power of appointment
14 conferred by the will or trust on the defendant, and
15 including any nomination of the defendant as executor,
16 trustee, guardian, or conservator or custodian made by
17 the will or trust, or otherwise, with respect to any
18 property, damages, or costs that were awarded to the
19 victim's estate under the following circumstances:

20 (1) As a result of a civil action where misconduct, as
21 described in subdivision (a), was proven.

22 (2) As a result of a civil action arising out of, incident
23 to, or related to, tortious conduct, as described in
24 subdivision (a).

25 (d) For purposes of this section, the following
26 definitions shall apply:

27 (1) Physical abuse as defined in subdivision (c) of
28 Section 15610 of the Welfare and Institutions Code.

29 (2) Neglect as defined in subdivision (d) of Section
30 15610 of the Welfare and Institutions Code.

31 (3) Isolation as defined in Section 368 of the Penal
32 Code.

33 (4) Fiduciary abuse as defined in subdivision (f) of
34 Section 15610 of the Welfare and Institutions Code.

35 SEC. 4. Section 2583 of the Probate Code is amended
36 to read:

37 2583. In determining whether to authorize or require
38 a proposed action under this article, the court shall take
39 into consideration all the relevant circumstances, which
40 may include but are not limited to:

- 1 (a) Whether the conservatee has legal capacity for the
2 proposed transaction and, if not, the probability of the
3 conservatee's recovery of legal capacity.
- 4 (b) The past donative declarations, practices, and
5 conduct of the conservatee.
- 6 (c) The traits of the conservatee.
- 7 (d) The relationship and intimacy of the prospective
8 donees with the conservatee, their standards of living,
9 and the extent to which they would be natural objects of
10 the conservatee's bounty by any objective test based on
11 such relationship, intimacy, and standards of living.
- 12 (e) The wishes of the conservatee.
- 13 (f) Any known estate plan of the conservatee
14 (including, but not limited to, the conservatee's will, any
15 trust of which the conservatee is the settlor or beneficiary,
16 any power of appointment created by or exercisable by
17 the conservatee, and any contract, transfer, or joint
18 ownership arrangement with provisions for payment or
19 transfer of benefits or interests at the conservatee's death
20 to another or others which the conservatee may have
21 originated).
- 22 (g) The manner in which the estate would devolve
23 upon the conservatee's death, giving consideration to the
24 age and the mental and physical condition of the
25 conservatee, the prospective devisees or heirs of the
26 conservatee, and the prospective donees.
- 27 (h) The value, liquidity, and productiveness of the
28 estate.
- 29 (i) The minimization of current or prospective
30 income, estate, inheritance, or other taxes or expenses of
31 administration.
- 32 (j) Changes of tax laws and other laws which would
33 likely have motivated the conservatee to alter the
34 conservatee's estate plan.
- 35 (k) The likelihood from all the circumstances that the
36 conservatee as a reasonably prudent person would take
37 the proposed action if the conservatee had the capacity
38 to do so.
- 39 (l) Whether any beneficiary is a person described in
40 paragraph (1) of subdivision (b) of Section 21350.



1 (m) *Whether a beneficiary perpetrated a tort against*
2 *the conservatee after the conservatee was substantially*
3 *unable to manage his or her financial resources or resist*
4 *fraud or undue influence, and the conservatee's disability*
5 *persisted throughout the time of the hearing on the*
6 *proposed substituted judgment.*

7 SEC. 5. Section 15630 of the Welfare and Institutions
8 Code is amended to read:

9 15630. (a) ~~Any~~ *The following persons are mandated*
10 *reporters within the meaning of this chapter:*

11 (1) *Any elder or dependent adult care custodian,*
12 *health practitioner, or employee of a county adult*
13 *protective services agency or a local law enforcement*
14 *agency is a mandated reporter.*

15 (2) *Any person who has a fiduciary relationship with*
16 *the elder or dependent adult.*

17 (3) *Any person working for a bank or other financial*
18 *institution.*

19 (4) *Any firefighters, humane society officers, or*
20 *animal control officers.*

21 (5) *Any clergy member as defined in Section 11165.17*
22 *of the Penal Code, and subject to the limitations*
23 *described in subdivisions (c) and (d) of Section 11166 of*
24 *the Penal Code.*

25 (6) *Any person who is a member of a religious or*
26 *charitable group or society who provides services to, or*
27 *regularly comes into contact with, an elder or dependent*
28 *adult, other than a member of the clergy.*

29 (b) *The term "abuse" as used in this section includes*
30 *all of the following:*

31 (1) *Physical abuse as defined in Section 15610 of the*
32 *Welfare and Institutions Code.*

33 (2) *Fiduciary abuse as defined in Section 15610 of the*
34 *Welfare and Institutions Code.*

35 (3) *Isolation as defined in Section 368 of the Penal*
36 *Code.*

37 ~~(b)~~

38 (c) *Any mandated reporter, who, in his or her*
39 *professional capacity, or within the scope of his or her*
40 *employment, has observed an incident that reasonably*

1 appears to be physical abuse, observed a physical injury
2 where the nature of the injury, its location on the body,
3 or the repetition of the injury clearly indicates that
4 physical abuse has occurred or is told by an elder or
5 dependent adult that he or she has experienced behavior
6 constituting physical abuse shall report the known or
7 suspected instance of abuse by telephone immediately or
8 as soon as possible, and by written report sent within two
9 working days, as follows:

10 (1) If the abuse has occurred in a long-term care
11 facility, except a state mental health hospital or a state
12 developmental center, the report shall be made to the
13 local ombudsman or the local law enforcement agency.

14 (2) If the suspected or alleged abuse occurred in a
15 state mental health hospital or a state developmental
16 center, the report shall be made to designated
17 investigators of the State Department of Mental Health
18 or the State Department of Developmental Services or to
19 the local law enforcement agency.

20 (3) If the abuse has occurred any place other than one
21 described in paragraph (1), the report shall be made to
22 the adult protective services agency or the local law
23 enforcement agency.

24 ~~(e)~~

25 (d) (1) Any mandated reporter who has knowledge
26 of, or reasonably suspects that, types of elder or
27 dependent adult abuse for which reports are not
28 mandated have been inflicted upon an elder or
29 dependent adult or that his or her emotional well-being
30 is endangered in any other way, may report the known or
31 suspected instance of abuse.

32 (2) If the suspected or alleged abuse occurred in a
33 long-term care facility other than a state mental health
34 hospital or a state developmental center, the report may
35 be made to the long-term care ombudsman program.

36 (3) If the suspected or alleged abuse occurred in a
37 state mental health hospital or a state developmental
38 center, the report may be made to the designated
39 investigator of the State Department of Mental Health or
40 the State Department of Developmental Services, or to

1 a local law enforcement agency or to the local
2 ombudsman.

3 (4) If the suspected or alleged abuse occurred
4 anywhere else, the report may be made to the county
5 adult protective services agency.

6 (5) If the conduct involves criminal activity not
7 covered in subdivision (b), it may be immediately
8 reported to the appropriate law enforcement agency.

9 ~~(d)~~

10 (e) When two or more mandated reporters are
11 present and jointly have knowledge or reasonably suspect
12 that types of abuse of an elder or a dependent adult for
13 which a report is or is not mandated have occurred, and
14 when there is agreement among them, the telephone
15 report may be made by a member of the team selected
16 by mutual agreement, and a single report may be made
17 and signed by the selected member of the reporting
18 team. Any member who has knowledge that the member
19 designated to report has failed to do so shall thereafter
20 make the report.

21 ~~(e)~~

22 (f) A telephone report of a known or suspected
23 instance of elder or dependent adult abuse shall include
24 the name of the person making the report, the name and
25 age of the elder or dependent adult, the present location
26 of the elder or dependent adult, the names and addresses
27 of family members or any other person responsible for the
28 elder or dependent adult's care, if known, the nature and
29 extent of the elder or dependent adult's condition, the
30 date of the incident, and any other information, including
31 information that led that person to suspect elder or
32 dependent adult abuse requested by the agency
33 receiving the report.

34 ~~(f)~~

35 (g) The reporting duties under this section are
36 individual, and no supervisor or administrator shall
37 impede or inhibit the reporting duties, and no person
38 making the report shall be subject to any sanction for
39 making the report. However, internal procedures to
40 facilitate reporting, ensure confidentiality, and apprise

1 supervisors and administrators of reports may be
2 established, provided they are not inconsistent with this
3 chapter.

4 ~~(g)~~

5 (h) (1) Whenever this section requires a county adult
6 protective services agency to report to a law enforcement
7 agency, the law enforcement agency shall, immediately
8 upon request, provide a copy of its investigative report
9 concerning the reported matter to that county adult
10 protective services agency.

11 (2) Whenever this section requires a law enforcement
12 agency to report to a county adult protective services
13 agency, the county adult protective services agency shall,
14 immediately upon request, provide a copy of its
15 investigative report concerning the reported matter to
16 that law enforcement agency.

17 (3) The requirement to disclose investigative reports
18 pursuant to this subdivision shall not include the
19 disclosure of social services records or case files that are
20 confidential, nor shall this subdivision be construed to
21 allow disclosure of any reports or records if the disclosure
22 would be prohibited by any other provision of state or
23 federal law.

24 ~~(h)~~

25 (i) Failure to report ~~physical~~ abuse of an elder or
26 dependent adult, in violation of this section, is a
27 misdemeanor, punishable by not more than six months in
28 the county jail or by a fine of not more than one thousand
29 dollars (\$1,000), or by both that fine and imprisonment.

30 SEC. 6. No reimbursement is required by this act
31 pursuant to Section 6 of Article XIII B of the California
32 Constitution because the only costs that may be incurred
33 by a local agency or school district will be incurred
34 because this act creates a new crime or infraction,
35 eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition
38 of a crime within the meaning of Section 6 of Article
39 XIII B of the California Constitution.



1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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